



10 ADMINISTRATION
10.52 Civil Rights: Fair Hearings

Effective: 6/1/96
Revised: 05/01/03

POLICY: The local project shall provide a hearing procedure through which any individual may appeal a local project action which results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from the Program.

PROCEDURE:

A. HEARING SYSTEM

The local project shall provide a hearing that permits the individual to appeal a local agency decision to the State Agency.

B. NOTIFICATION OF APPEAL RIGHTS

At the time of a claim against an individual for improperly issued benefits or at the time of the denial of Program participation, the local project shall inform each individual in writing of the right to a fair hearing, and of the method to request a fair hearing.

1. All applicants found ineligible, whether in person or through a telephone or written inquiry, shall be informed, in writing, of the reason for that determination and their right to a fair hearing.
2. An applicant or participant found ineligible for the Program prior to or during the certification visit, shall be advised in writing of their ineligibility, of the reasons for the ineligibility, and the right to a fair hearing.
3. Provide the person with a copy of the letter generated by the computer or a copy of the WIC Ineligibility/Termination and Waiting List Letter (DPH4220/4220S) which notifies applicants and participants of their rights for a fair hearing.
 - a) Provide the letter immediately if the applicant is present, and as soon as possible (within 30 calendar days) if the application was mailed or was a telephone inquiry.
 - b) Written notification is not required for telephone inquiries made when a name and address were not given.
 - c) For participants, a copy must be retained in the participant's file for three full fiscal years; for applicants, retain a copy in an Ineligible File for at least 60 days from the date of the Program's action.



- d) Notification is not required at the end of a certification period.
- e) Each woman participant, parent, caregiver or guardian reads, or has read to them, the WIC Rights and Responsibilities (DPH 4161/4161S) and signs and dates the form. These same WIC Rights and Responsibilities are printed in the Identification Folder (DPH 4160/4160S).

C. REQUEST FOR HEARING

The applicant/participant may request a fair hearing from the WIC Project(s) which took the adverse action. A request for a hearing is defined as any clear expression by the individual, the individual's parent, caregiver, or other representative, that he or she desires an opportunity to present his or her case to a higher authority. The local project shall not limit or interfere with an individual's freedom to request a hearing.

- 1. The local project will inform the individual how to request a fair hearing, and that any position or argument on behalf of the individual may be presented personally or by a representative such as a relative, friend or legal counsel.
- 2. The request may be made orally or in writing. In the event an individual makes the request orally or through a telephone call and refuses or is not inclined to make the allegations in writing, the person receiving the call shall write up the request.

D. TIME LIMIT FOR REQUEST

Each individual must request a fair hearing within 60 days from the date the project mails or gives the applicant or participant the notice of adverse action.

E. DENIAL OR DISMISSAL OF REQUEST

The request for an appeal may be denied or dismissed if:

- 1. the request is not received within the 60 day time limit,
- 2. the request is withdrawn by the applicant/participant or representative,
- 3. the applicant/participant or representative, without good cause, failed to appear at the scheduled hearing, or
- 4. the applicant/participant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to Program eligibility have changed in such a way as to justify a hearing.



F. CONTINUATION OF BENEFITS

1. Participants who appeal the termination of benefits within the 15 days advance notice of adverse action shall continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first.
2. Participants who appeal the termination of benefits after the actual date of termination (having been given 15 days prior notice of the termination) shall have benefits discontinued.
3. Applicants who are denied benefits at initial certification because of ineligibility (e.g., being over income, not at risk), or because of the expiration of their certification, may appeal the denial but shall not receive benefits while awaiting the hearing.

G. RULES OF PROCEDURE

Local projects shall process each request for a hearing under uniform rules of procedure and shall make these rules available for public inspection and copying.

1. A sample Fair Hearing Procedure for WIC Participants is in the Attachment.
2. All agency developed procedures used instead must be approved by the State WIC Program during onsite monitoring reviews.
3. The agency Fair Hearing Procedure shall be kept up-to-date.

H. HEARING OFFICIAL

The WIC Project shall annually designate a fair hearing official to preside at the fair hearing.

1. The Hearing Official shall be an impartial official who does not have any personal stake or involvement in the decision and who was not directly involved in the initial determination of the action being contested. The duties of the hearing official are:
 - a) administer oaths or affirmations
 - b) ensure that all relevant issues are considered
 - c) request, receive and make part of the hearing record evidence determined necessary to decide the issues being raised



- d) regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing
- e) order, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the applicant/participant and the local project
- f) render a hearing decision exclusively based on the hearing record which will resolve the dispute

I. CONDUCT OF THE HEARING

The local project shall offer a fair hearing that is no more than three weeks (15 working days) from the date of the receipt of the request for a fair hearing.

1. The local project shall provide at least 10 working days advance written notice of the time and place of the hearing and shall enclose an explanation of the hearing procedures with the notice.
2. The time and location of the fair hearing shall be accessible to the applicant/participant, and consider work and school schedules as needed.
3. The local project shall also provide the applicant/participant or representative an opportunity to:
 - a) examine, prior to and during the hearing, the documents and records presented to support the decision under appeal
 - b) be assisted or represented by an attorney or representative
 - c) bring witnesses
 - d) argue his/her points without interference
 - e) question or refute any testimony or evidence, including an opportunity to confront or cross-examine adverse witnesses
 - f) submit evidence to establish all pertinent facts and circumstances in the case

J. RESCHEDULING THE HEARING

An applicant/participant may reschedule a hearing date no more than twice under the following condition:

1. A first request to reschedule may be granted by the WIC project upon specific request to the project.



2. A request to reschedule a hearing a second time shall be granted by the WIC project only for good cause. Good cause occurs when the applicant/participant or representative cannot attend the scheduled hearing due to circumstances beyond his or her control, including but not limited to serious illness, unavailability of transportation to the hearing due to mechanical problems, or severe weather conditions.
3. The WIC project may reschedule the hearing date under circumstances similar to those stated in 1. and 2. above.

K. FAIR HEARING DECISIONS

Decisions of the hearing official shall be based upon the application of appropriate federal law, regulations and policy as related to the facts of the case as established in the official hearing record.

1. **OFFICIAL HEARING RECORD:** a recording or verbatim transcript of testimony and exhibits, along with all supporting documents, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding:
 - a) constitute the official record for a final decision by the hearing official
 - b) project shall make and retain the hearing record and make these available for copying and inspection, to the applicant/ participant or representative at any reasonable time
2. The decision of the hearing official shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations or policy.
3. Within 45 days of the receipt of the request for the hearing, the local project shall notify the applicant/participant or representative in writing of the decision and the reasons for the decision.
 - a) If the decision is in favor of the applicant/participant and benefits were denied or discontinued, benefits shall begin immediately, but are not retroactive.
 - b) If the decision concerns disqualification and is in favor of the agency, as soon as administratively feasible, the local project shall terminate any continued benefits, as decided by the hearing official.



- c) If the decision regarding repayment of benefits by the applicant/participant is in favor of the agency, the local project shall resume its efforts to collect the claim.

L. APPEAL OF LOCAL PROJECT DECISION

The applicant/participant may appeal a local hearing decision to the State Agency, provided that the request for appeal is made within 15 working days of the mailing date of the hearing decision notice.

1. If the decision being appealed concerns disqualification from the Program, the applicant/ participant shall not continue to receive benefits while an appeal to the State Agency of a decision rendered on appeal at the local level is pending.
2. The decision of a hearing official at the local level is binding on the local project and the State Agency unless it is appealed to the State level and overturned by the State hearing official.
3. The State and local project shall make all hearing records and decision available for public inspection and copying; however, the names and addresses and participants and other members of the public shall be kept confidential.

M. JUDICIAL REVIEW

If a State level decision upholds the local project action and the applicant/participant expresses an interest in pursuing a higher review of the decision, the State Agency shall explain the applicant's/ participant's right to appeal the decision to Circuit Court.

ATTACHMENTS

Sample Fair Hearing Procedure (Rev 10/00)